IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, GRAHAMSTOWN)

CASE NO.: CA 81/2020

In the matter between:

SIGIDLA NDUMO Appellant

and

THE MINISTER OF ARTS AND CULTURE

NOMINE OFFICIO First Respondent

THE SOUTH AFRICAN GEOGRAPHICAL

NAMES COUNCIL Second Respondent

MAKANA MUNICIPALITY Third Respondent

JUDGMENT

REVELAS J

The appellant appeals against the order of Lowe J, dismissing his application to review and set aside two decisions of the first respondent, the Minister of Arts and Culture. The decisions in question were made in terms of section 10(1) of the South African Geographical Names Council Act 118 of 1998 ('the Act'). The first decision challenged was the approval of the change of name of the town Grahamstown to Makhanda. The second decision was the rejection of the appellant's objection to the first respondent's approval of the name change in terms of section 10(5) of the Act.

1. In terms of section 9(1)(d) of the Act, the Minister responsible for Arts and Culture (in this case, the first respondent) may accept or reject a geographical name recommended on the advice of the second respondent, the South African Geographical Names Council Names (the second respondent), who in turn acted on the recommendations submitted to it by the Eastern Cape Provincial Geographical Names Committee ('the Names Committee' or 'PGNC'). The decision was published in the Government Notice 41738 of 29 June 2018.

   Neither the court *a quo*, nor this court was required to consider the appropriateness or merits of the name change. The primary question to be decided by the court *a quo* was, as the learned judge in that court put it: *"whether in the required process stipulated for in the legislative matrix,* ***adequate consultation with communities and stakeholders took place****. In this matter then the crucial enquiry at the start is whether the Names Council having informed the Minister that a proper consultation process has been followed was correct, or was incorrect, and (if so, this being a material misstatement of fact)* –

such as to influence his decision and thus such as to fall within section 6(2)(e)(iii) of PAJA." (emphasis added) In the aforesaid regard, his Lordship referred to the matter of *Chairpersons' Association v Minister of Arts and Culture and Others*[1]

This court is tasked to consider whether the judge in the court *a quo,* in finding that there were no grounds upon which the first respondent's decisions could be set aside on review, misdirected himself, and sufficiently so, to justify setting the dismissal if the review aside.

The Legislation

The applicable legislation was set out at length in the judgment of the court *a quo* and it is not necessary to do so in this judgment but some sections need to be referred to again. Because the applicant challenged the validity of an administrative decision, the application for review was brought in terms of the provisions of the Promotion of Administrative Justice Act, Act 3 of 2000 ('PAJA').

The relevant portion of section 6 of the PAJA reads:

"A Court o*r tribunal has the power to judicially review an administrative action if -*

……

(e) the action was taken-

……

(iii) because irrelevant considerations were taken into account or relevant considerations were not considered… "

[1] 2007 (5) SA 236 (SCA) paragraphs [47] to [50]

The purpose of the Act is:

"(t)o establish a permanent advisory body known as the South African Geographical Names Council to advise the Minister responsible for arts and culture on the transformation and standardisation of geographical names in South Africa for official purposes, to determine its objects, functions and methods of work; and to provide for matters connected therewith."

Section 1 of the Act defines *"standardisation"* to mean:

"(a) determination of-

the name to be applied to each geographical feature;

the written form of a name; and

(b) the regulation by an appropriate authority of a geographical name, its written form and its application…"

Section 2(1) of the Act provides for the establishment of the second respondent and sets out its objectives to be, *inter alia*:

"(a) to facilitate the establishment of Provincial Geographical Names Committees;

(b) to ensure the standardisation of geographical names;

(c) to facilitate the transformation process for geographical names;

(d) to promote the use of standardised South African geographical names at an international level…"

Section 9 also sets out the powers and duties of the second respondent:

'9(1) The Council must-

set guidelines for the operation of Provincial Geographical Names Committees;

set standards and guidelines for local and provincial authorities in their respective areas of jurisdiction;

receive proposed geographical names submitted by State departments, statutory bodies, provincial governments, municipalities and other bodies or individuals;

recommend geographical names falling within the national competence to the Minister of approval;

advise the Minister on-

the standardisation of proposed new geographical names;

(ii) existing geographical names not yet standardised;

(iii) the changing, removing or replacing of geographical names; and

(iv) geographical names and their orthography;

in consultation with provincial governments, identify existing geographical names in need of revision, and co-ordinate requests for advice on geographical names and standardisation…'

10. Section 10 of the Act deals with the approval and revision of geographical names and provides that:

'(1) The Minister may approve or reject a geographical name recommended by the Council in terms of s 9(1)(d).

(2) A geographical name approved or rejected by the Minister in terms of ss (1) must be published in the Gazette.

(3) Any person or body dissatisfied with a geographical name approved by the Minister may, within one month from the date of publication of the geographical name in the Gazette, lodge a complaint in writing to the Minister.

(4) The Minister may refer the complaint to the Council for advice whether or not to reject or amend a geographical name so approved.

(5) The Minister must inform the complainant of the decision on the complaint and the reason for the decision.'

11. The guidelines contemplated in section 9(1)(a) of the Act and the *"policies, principles and procedures"* formulated in terms of section 9(1)(i) of the Act are those reflected in the "Handbook on Geographical Names" ("the guidelines").

The guidelines establish "Provincial Geographical Names Committees" ("the PGNCs" or "the Names Committees"). The functions of these committees are to advise local authorities and to work with them to ensure that the principles of Names Council are applied. To make recommendations to the Names

Council on the names and geographical features that fall within the provincial boundaries. A PGNC or Names Committee should *"do preparatory work for the submission of names to the SAGNC, and is responsible for seeing to it that local communities and other stakeholders are adequately consulted."*

13. The guidelines also deal with the issue of standardisation. Under the heading *"Why geographical names should be standardised",* it is stated, *inter alia* that:

"…

Names may sound the same or the spelling of one place name may be very close to that of another;

Names can be spelled in different ways;

In a multilingual country such as South Africa, places often have more than one name.

These situations lead to misunderstandings and confusion. In order to avoid this, geographical names are standardised by authorities throughout the world."

14. Under the heading "Policies for Standardisation" the guidelines provide the following:

"Standardisation is based on:

The current orthographic (spelling) rules of the languages from which the names are derived;

The wishes of the local population provided they are not in conflict with the principles of the SANGC.

The historical use of the name.

Redress, where a names is changed on the basis of historical considerations…"

15. The guidelines also provide that the second respondent receives all applications under its jurisdiction and ensures that proper consultation has taken place and that the name meets the second respondent's requirements in all respects. The second respondent takes the final decision on the form or forms of names and recommends them to the first respondent. Once a name has been approved by the first respondent that name has been standardised.

Factual Background

12. The appellant brought the application for review in his personal capacity as a citizen who had been living in the town for most of his life. He was also a joint co-ordinator of the Keep Grahamstown Grahamstown ("KGG") campaign, set up to oppose the renaming of the town Grahamstown. Mr J.C. McConnachie was the other co-ordinator of KGG. The campaign was launched after the first announcement regarding a name change was made in September 2007.

13. On 22 September 2007 a "snap poll" was conducted in the town during which it was established that many who lived in the town Grahamstown were against a name change of the town. Mr McConnachie, on behalf of the KGG wrote to mayor of the Makana Municipality, Mr P.M. Kate, that almost 80% of the

persons questioned during the poll were against a name change and did not find the name Grahamstown offensive and that a name change would be divisive and lead to acrimony. The letter also indicated that the name Grahamstown was no longer associated with Colonel Graham who live two centuries before. Attached to a further letter from McConnachie to Kate, were copies of several petitions against a name change. The KGG also submitted approximately 5000 signatures from people who were against a name change. According to the KGG, the poll covered all racial and cultural groups in Grahamstown and the majority of those who participated in the poll were residents of the townships and rural environs and were mostly not in favour of a name change.

14. The institute of Social and Economic Research at Rhodes University a conducted an investigation aimed at gathering attitudes to a name change. When the institute released its results and findings, it appeared from these that one third of the persons who had taken part in the survey supported a name change and mostly for the name to be changed to iRhini. The latter name was apparently derived from the name Rietfontein, a derelict farm in the area, many years ago.

15. On 2 October 2007 a special naming task team was appointed by the Executive Mayoral Committee of the third respondent ('the Municipality'). It was chaired by Ms J Wells, a councillor. The other members of the committee were also municipal councillors. The general public was invited to submit their views to this committee.

16. Later, Wells informed the naming task team that there seems to be strong opposition to the name change. The naming task team then decided that there was a need to educate people to *"understand all sides of the issue"*[2] with the use of videos and written materials because there were several people in the area who were illiterate and did not know the relevant history. Speakers from the names committee undertook to address any concerns raised. Clearly the committee did not accept the outcome of the public's response. The intention was to complete the process by the end of March 2008, but somehow nothing of significance occurred and the name change issue seemed to have lost its momentum for a while.

17. During these early independent polls and surveys and the process carried out by the Municipality (or the third respondent) over the period from 2007 to 2013, the only new name that was discussed was iRhini. The name Makhanda was never a contender, until 17 November 2014 when a Mr Mali and a Mr Nonzube submitted their applications for a name change to the PGNC. Mali, in his application, proposed Makhanda as his first choice and Nxele as his second. Nxele and Makhanda refers to the same Xhosa leader. Nonzuba proposed iRhini with Makhanda or Nxele as his second choice.

18. Both Mali and Nonzube were officials of the first respondent's Department. They were entitled to make application for a name change as section 9 of the Act permits applications or proposals by *"state departments, statutory bodies,*

[2] Per "Draft Report from Name Task Team Chairperson Clr J Wells" for discussion at meeting on 29 January 2008"

provincial governments, municipalities and other bodies or individuals" to be received by the SANGC. The respondents maintain that the two applications started a new name change process and that the 2007 to 2013 processes were irrelevant to the new process.

19. In terms of the *"Guidelines, Policies and Principles"* referred to above, the consultative process for a geographical change of name starts with the PGNC working with its metro or district sub-committees. The committee then invites stakeholders to a consultative process to be followed by a meeting where dates for public hearings are proposed and where stakeholders are mandated to obtain the views regarding the proposed name change from their members. According to the respondents such a meeting in fact took place. The meeting was scheduled by the Sarah Baartman District Municipality (as it was entitled to do in terms of the Guidelines) and took place on 16 September 2015. The KGG was invited to attend this meeting but declined to participate as they held the view that such a consultative meeting had already taken place in October 2007. The appellant argued that the KGG did not have to attend this meeting because three processes had been completed argued that and those who promoted the name change were precluded from repeating the process until they achieved the desired result by manipulation.

20. At the aforesaid meeting, 19 November 2015 was proposed as the date for the hearings where the name change in question (Grahamstown to Makhanda) would be discussed but that meeting did not take place. The explanation given

was that it was not possible, due to xenophobic attacks that were taking place during that time. It was then rescheduled and convened on 11 February 2016.

21. According to respondents, the 11 February 2016 meeting was attended by 165 persons as reflected by the attendance register, a copy of which was attached to the answering affidavit. The appellant, however, pointed out that no details of the stakeholders present at the one and only hearing were furnished. The KGG was also invited to this meeting but declined to attend on the basis that the process was unnecessary because the process had already taken place during 2007 -2013.

22. The appellant's assertion that there was no consultation with the relevant stakeholders and that the third respondent, the Makana Municipality, was excluded from the name changing process, is refuted by the respondents who referred to the following meetings which preceded the 11 February 2016 hearing. After the Mali application, a consultative meeting, which was advertised in a notice dated September 2015, was held on 15 September 2015. The KGG declined to attend. On 3 November 2015, the representatives of the PGNC and the Makana Municipality held a preparatory meeting. As referred to hereinbefore, the public hearing scheduled for 19 November 2015, and which could not take place, was eventually convened on 11 February 2015. The hearing was preceded by a meetings held on 27 and January 2016 which was attended by representatives of the Makana Municipality and the respondents' Department. On 29 January the aforesaid parties met again but included local stakeholders. The Sarah Baartman Names Committee (under

which the Makana Municipality falls) facilitated the renaming process. The respondents further allege that on 10 February a stakeholder's preparatory consultative meeting was held at the Makana Municipality, which included representatives of the respondents' department and the Makana Municipality. The meeting was attended by 54 persons and nine wards were represented. According to the respondents, the notification to the public of these meetings was widely published.

23. The public hearings were advertised in the Daily Dispatch and Herald newspapers, published in East London, Grahamstown and Port Elizabeth (not in Grocott's Mail, a Grahamstown newspaper) inviting responses to the proposal to have Grahamstown's name changed to Makhanda. It was also advertised on the local radio station.

24. On 14 May 2016, there was a further publication by the PGNC, seeking public comment on the proposed names. Thereafter the PGNC's sub-committee considered objections and made recommendations to the PGNC. In response to the 17 May 2016 advertisement, the KGG submitted a letter of objection. The KGG in its letter referred to the *Chairpersons' Association v Minister of Arts and Culture* judgment which held that before a proposal of a name change could be considered, proper consultation with local communities and stakeholders must take place. The KGG asserted that such consultation did not take place in the present case and therefore the name change would not withstand judicial scrutiny.

25. The reasons given for this view was that the one and only meeting or hearing held on 11 February 2016, where the proposal of the name change to Makhanda was adopted, was poorly attended by a mere 84 people (as opposed to 165 people as reflected by the attendance register) and those who attended were not representative of the local communities. Furthermore, during the 2007-2013 period, the majority of the persons in the community were against a name change and the Committee ought to have had regard to the outcome of the three processes conducted during the aforesaid period. The KGG also complained that they were not given access to the reasons behind the name change applications and decried the fact that the applicants for the new name change were officials of the Eastern Cape Arts and Culture Department.

26. In the same letter of objection to the Names Committee, the KGG levelled the following accusation: "*The ECPGNC had to be seen to go through the motions of a consultation process, however, the Naming Task Team of the Makana Municipality, which was specifically appointed for that purpose, did the bidding of the ECPGNC in conducting the necessary process with a mandate to deliver a predetermined outcome in favour of a name change. After matters did not go according to plan and the Makana Municipality was unable to deliver on its mandate to deliver a predetermined outcome in favour of name change. The ECPGNC in fact announced in 2008 that the colonial names of all towns in the Eastern Cape were to be changed and the name Grahamstown was prominent in a 'dirty dozen' list."* The aforesaid views and the nature of

objections raised by the KGG are to a large extent the appellant's present views.

27. On 20 November 2017 the chairperson of the Names Committee, Ms P Nazo, issued a response on behalf of the respondents' department. It was headed: *"Responses to Public Objections – Public Hearings held on 11 February 2019 in Grahamstown."* This document was addressed to the KGG, the Grahamstown Residents Association and the members of the two aforesaid organisations who had objected to the name change from Grahamstown to Makhanda. In this seven-page document, responding to the objections raised by the KGG, Nazo stated that at the 11 February meeting, there was not "*a single dissenting view"* on the proposed naming of Grahamstown to Makhanda. She emphasised that the meeting was widely advertised on posters, in newspapers and radio. Furthermore the stakeholders' representatives had been mandated to facilitate meetings of their constituencies and to impart all the information gathered at the first consultative meeting (16 September 2015) and to use such information to solicit views from its members. She also asserted that the appeal to history to make a case for keeping names associated with colonialism, such as the name Grahamstown "*is a blatant defence and affirmation of colonialism and racial discrimination."* Nazo also expressed her scepticism regarding the accuracy of the KGG's high number of signatories objecting to the name change who were allegedly from the rural areas. The objectors were also

advised of their right of appeal to be exercised in 30 days should they be dissatisfied with her response.

28. Thereafter, after objections were considered (according to the respondents). The PGNC sub-committee suggested that Grahamstown be renamed Makhanda. On 20 November 2017, the PGNC responded to the objections.

29. On 29 January 2018 the chairperson of the PGNC invited objectors to attend a meeting scheduled for 15 February 2018 in Grahamstown to reconsider objections. On 20 April 2018 the Names Council convened a special meeting, made its recommendations to the first respondent and on 5 June 2018 the first respondent approved the name change.

The Appellant's Case

30. The appellant has set out several grounds of appeal. It was contended on his behalf that learned judge in the court *a quo* erred as follows:

31. The appellant contended that the first respondent failed to consider the earlier processes which ran from 2007 to 2013 and the public's response thereto. The consultative process (the new process) which commenced in 2015 was entirely inadequate and in fact amounted to no consultation at all and was thus a fatal irregularity. The learned judge in the court *a quo* therefore erred in not finding accordingly. It was submitted that that the court *a quo* erred in not finding that the 2007 – 2013 processes, which were concerned with the principle of a name change, and was overwhelmingly rejected, ought to have been considered. It was also contended that no weight was attached to the

independent enquiry by the Institute for Social and Economic Research, which showed that there was limited minority support for a name change and the preferred name was Rhini.

32. The appellant also argued that inadequate consideration was given to the principles set out and the approach adopted in *Chairpersons Association v Minister of Arts and Culture and Others*[3]. Furthermore, the learned judge erred in finding that, notwithstanding the approach adopted in the aforesaid judgment, that adequate proper consultation is only that which is reasonably necessary to give those referred to a reasonable chance of being heard. The appellant is of the view that the bar is much higher.

33. It was further contended that the learned judge ought to have found that the failure by the PGNC to consult with the local municipality (the third respondent) in respect of the proposed name change was a fatal irregularity which required the review and setting aside of the first respondent's decision.

34. The appellant also submitted that the failure by the first respondent to advise the public of its right to lodge a complaint within one month of his final decision amounted to a fatal procedural irregularity, which ought to have resulted in setting aside the first respondent's decisions on review.

35. The appellant contends that learned judge erred in failing to find that there were material errors of fact on which the First Respondent relied for his decision *inter alia,* his belief that the previous three consultative processes

[3] 2007 (5) SA 236 (SCA)

over six years related to a change of name of the Municipality and not the town; The appellant argued that the court *a quo* ought to have found that the first respondent's motivation for having no regard to the previous processes was premised on this mistaken belief, which, on its own, rendered the decision reviewable. The appellant argued that the first respondent's decision was therefore reviewable under section 6(2)(f)(ii) of PAJA for its lack of rationality and under section 6(2)(a)(iii) of PAJA.

36. The appellant stressed that no reason was given for the rejection of the name iRhini and insufficient reasons were furnished for the granting of Mali's application to have the name changed to Makhanda. According to the appellant, the name change was based on offensiveness and not historical reasons. It was submitted that the court *a quo* ought to have given appropriate consideration to the manifestation of bias on the part of both the PGNC and the second respondent, which was *inter alia,* to be seen in the fact that the name Makhanda was preferred to the exclusion of the name Rhini.

37. The appellant referred to the fact that the first respondent had misstated certain historical contexts. The appellant also suggested that the name change was based on "offensiveness" and not for historical reasons and contended that there was a reasonable suspicion of bias on the part of the PGNC and the second respondent. In addition it was submitted that the reasons given by these bodies for their recommendations to the first respondent were not rationally connected to the information placed before them and upon which the

first respondent relied. Accordingly, the argument went, the decision of the first respondent was also reviewable in terms of section 6(2)(f)(ii) of PAJA.

38. At this juncture it is convenient to point out that there are indeed inaccuracies in the first respondent's account of the history of the name Grahamstown. However, when the appeal was argued, both sides were *ad idem* that the town was named Grahamstown in honour of the colonial military and the name Grahamstown was no longer pursued by the appellant. The appellant only challenges the procedure followed in changing the name Grahamstown to Makhanda. Accordingly the findings made by the Lowe J that the new name was chosen for considerations of redress and thus not offensive, is no longer in issue.

39. The judge *a quo* is criticised for not finding that Mr Mali's application did not comply with the applicable regulations in that it lacked detail (reasons for the choice of name) and stating in the application that it was for historical reasons was not in compliance with the prescripts the Act.

40. The appellant challenged the first respondent's decisions also on the basis that for the lack of standardisation, since the name of the relevant municipality and the name of the town differed in spelling, being Makhana and Makhanda respectively. It was submitted that the second respondent and the PGNC therefore did not follow the mandatory prescripts for the standardisation of names in the Act. Accordingly, the first respondent did not apply his mind to the contradictory spelling. The aforesaid omission was therefore reviewable in

terms of section 6(2)(b) of PAJA and the judge *a quo* ought to have found accordingly.

The Respondents' Case

41. Their case can be succinctly stated. With regard to the three 2007 to 2013 processes conducted by the Municipality in conjunction with the Names Committee, the Respondents stated that these processes were irrelevant to the new process started by Mr Mali, and that in this new process, the Act and the Guidelines were adhered to. The respondents also challenged the appellant's interpretation of the relevant legislation, i.e. the Names Act.

Discussion

42. During this name change saga which commenced in 2007, those opposed to the name change were motivated by a range of considerations such as the unnecessary costs of a name change in a town where such funds could be spent on the town's infrastructure, the loss in revenue concomitant with the name change as Grahamstown's name was associated with the Grahamstown Arts Festival and other well-known events and its University. Objectors also included those persons with a cultural and historical attachment to the old name of the town. Those who were in favour of the name change to Makhanda, appeared to have been motivated by political, cultural and historical and considerations. Then there were those who did not wish to express a view either way because of a lack of interest, or because they lacked the necessary knowledge of the history behind the names in question.

This last-mentioned category no doubt caused some concern for the supporters of the second category and particularly the naming task team, in circumstances where the first category (*inter alia,* the KGG) was successful in drumming up substantial support in the form of thousands of signatures. Hence the plan to educate the public was suggested by Wells' naming task team in 2007. What happened to those plans is not clear, but eight years later Mr Mali's application opened the name change issue for a second time and started a new process.

43. The question that arises is whether the fact that no name change was achieved during 2007 and later years, precluded anyone from applying for a specific name change. The appellant seems to be of the view that there is indeed such a prohibition. Clearly, the Act contains no such prohibition. The question of a name change only becomes finite once the first respondent publishes his approval or rejection of a geographical name in the Government Gazette. As I understand it, the appellant is of the view that the snap poll results, the outcome of the independent survey and the incomplete process of the naming task team were the last word on the matter. The applicant's contention that 80% of those who were interviewed during the early "snap poll" were against the name change could not be disputed, but as was pointed out in the judgment of the court *a quo*, the details and demographics of the poll were unexplained as was its relevance to the new application. Later, 10 000 complaints were obtained from those opposed to the name change and sent to the first respondent by registered post in a box.

44. The appellant contended that because no consultative process took place in terms of the Act, the review ought to have succeeded. The appellant, albeit in his capacity as co-ordinator of the KGG, was invited to attend the 16 September 2015 and 11 February 2016 meetings, but declined to attend. Having made such an election it is hardly open to the appellant to complain that there was no consultation at all. The respondents contended that preparatory and other meetings were held as well, and a proper process with adequate consultation took place. As demonstrated above, that cannot be gainsaid.

45. The learned judge *a quo* described the KGG's non-participation in the processes which commenced with the new application for a name change as *"unfortunate, unwise and intransigent"* and pointed out that the KGG's (and thus the appellant's) inclusion right at the start of the Mali process, was ill advised considering its previous deep involvement and substantial representative nature. The learned judge, correctly in my respectful view, observed that the first respondent could hardly be blamed for the KGG's failure to participate and "*then only entered the fray at a later state submitting a 'comment/objection' in response to the newspaper invitations to comment or object dated 17 May 2016".*

46. The participation of the appellant or the KGG was necessary from the outset in the new process. It would have been the ideal opportunity for the co-ordinators to scrutinise the details of the stakeholders, such as whether they indeed were stakeholders and whether they represented the communities fairly and

accurately. There were also other meetings and hearings held which the KGG also declined to attend. Had they participated in the process they would have been in a better position ascertain whether there was political manipulation in the renaming process, and thus whether the process was tainted with bias. The Act entitles any government department, which would include the respondents' department, to apply for a name change as was done in the present matter. That of course opens the door for possible political manipulation which can taint the whole process with bias. A finding of political manipulation and bias must be based on more than suspicion. Evidence is required. As stated before, the appellant and the KGG Campaign saw fit not to attend important meetings held in accordance with the prescribed legislation. Absent parties are not in a position to provide such evidence. Some of the utterances of the first respondent regarding Colonel Graham are rather emotive and may cause some to have a suspicion of bias. The language must also be seen in context as Lowe J explained when interpreting the applicable legislation. Several of the name changes in the country have led to bitter disputes with very strong feelings expressed on both sides. However not too much should be read into it, since all parties are entitled to their views on this contentious issue.

47. The stance of the KGG, and the appellant, who must be included in that stance by virtue of his position as co-ordinator of that campaign, undermined their opposition to the name change by their non-participation. As the learned judge *a quo* put it: "*The fact remains that it was invited to be part of the*

consultation process at the outset and declined to participate in that process – thus willingly and deliberately depriving the Minister, Names Committee and participants, at the commencement of the process, of the benefit of its views and standpoints. It appears now however to complain thereof from the shadows".

48. The court *a quo* found that there was sufficient notification of the consultative meetings called by the naming committee of the second respondent (in four newspapers, three radio broadcasts and publice posters) and thus the fact that there was a comparatively low attendance rate at these meetings did not matter. The respondents contended that they could not be responsible for the number of people who attended the meetings which were widely advertised. In my view, the crucial question to ask is to what extent the individuals who attended the meetings were representative of their communities? Those who were absent from the meeting are not in a position to dispute the allegation that they were sufficiently representative of the communities. On the respondents' the wards version were indeed represented.

49. The proposition that the naming process was procedurally and fatally irregular because there was no consultation with the local municipality has no merit. It is based on an inaccurate statement of fact. As can be seen above under the heading Background Facts, there were indeed meetings with the local municipality. It was party to the proceedings.

50. The appellant's challenge directed at the first respondent's omission to inform the public that complaints could be lodged within a month after the first

respondent published the name change in the gazette as provided for in section 10(3) of the Act, was in my view properly dealt with by Lowe J. The omission was held to have no impact on the substance of the decision "*having no influence on the outcome."* It was also pointed out that the first respondent's decision as gazetted was the final one, subject to a form of internal appeal that would be considered by the same official and the decision can be taken without guidance from the second respondent. The first respondent was acutely aware of the opposition to the name change and the extent of it. In my view, the omission in question is not reviewable.

51. The first respondent's belief that the 2007 to 2013 processes regarding name change was in relation to the local municipality, and not the actual town of Grahamstown, does not render the procedure embarked upon since the Mali application, reviewable either. The earlier processes were of no relevance to the one the first respondent had before him. It was an entirely a new application and given all the complaints the first respondent received and responded to, he could hardly have believed that the new application was unopposed.

52. It does not assist the appellant to distance himself from the KGG Campaign at this stage. As I understood the arguments of the appellant on appeal, the appellant presently supports the name change for Grahamstown to be iRhini. That was not the case before the first respondent. He was presented with a case where the position of those who were ardently opposed to the name

change, was that the geographical name Grahamstown must remain unchanged. iRhini was not an issue.

53. The appellant complained that Mali's application and support for the name Makhanda was not accompanied by sufficient detail to substantiate his choice of name and no reasons were given by the first respondent for not favouring iRhini as the new name. Mali stated in his application that he chose Makhanda and Nxele as names for historical reasons. Makhanda or Nxele (the same person), was a historical figure. If the Mali application indeed lacked sufficient detail, it is hardly a reviewable defect in the proceedings and the learned judge *a quo*'s reasoning in this regard was not a misdirection. The fact that no reasons were given for not proposing the name iRhini is not a reviewable flaw either. Nonzube, the other applicant, applied for the name iRhini as first choice, but Makhanda or Nxele was his second choice. In these circumstances, where both applicants supported the name Makhanda, not giving reasons as to why iRhini was not chosen does not constitute a ground for review. The KGG was informed that the decision to propose the name Makhanda, was unanimously reached at the meeting of 11 February 2016. Lowe J correctly held that this issue was in any event outside the purview of the application before him.

54. The court *a quo* did not regard the different spellings of the name of the local municipality, Makana and its town name Makhanda as a reviewable breach of the standardisation policies under the Act. Once the name change to Makhanda was published in the Government Gazette, it became standardised.

As was pointed out, this “error“could easily be rectified by an amendment of the spelling of the name of the Makana Municipality without any difficulty. As a ground for review this point has no merit.

1. The fact that the box containing thousands of signatures against the name change was uncollected may appear suspicious in the circumstances, but I am unable to find that any bias was proved. Clearly the first and second respondents were well aware of the very substantial opposition to the name change, especially by the KGG. The appellant stated in the founding affidavit that “*The KGG’s final objection in response to the publication of the notice on the 29th of June 2018 was submitted to the Minister electronically on the 19th of July 2018 and sent by post on the 23rd of July 2018*”. Even though the box of complaints was not attended to by the first and second respondents, they were made well aware of the complaint by the KGG which was set out in a very comprehensive letter. Reference was made to the e-mails containing individual complaints that were too voluminous to send with the letter, but would be delivered the offices of the Department of Arts and Culture. Copies of the covering letters from the KGG and an attorney, which covered the objection to the notice, including an index all the relevant annexures referred to in the objection, were all attached to the letter.

2. The first responded stated that he had regard to the complaint of the KGG dated 19 July 2018 and which constituted the “*lodging of a complaint”* referred to in section 10 of the Act. However, as the court *a quo,* found, many of the supporting emails referred to predate the first respondent’s decision. The

remaining emails should have been addressed to and sent directly to the first respondent. Hence the court held the non-receipt of the box with the complaints to be irrelevant. In my view, that was not a misdirection.

3. Much correspondence was received from the KGG setting out all the considerations and reasons for the opposition, even though none of the opposing parties attended the relevant meetings. What was conveyed to the first respondent was that the communities were sufficiently represented at these meetings.

4. The appellant, like the KGG before him, wishes to enforce the outcome of two processes which were not conducted in accordance with the procedures set out in the Act (the 2007 snap poll, the independent survey) and the abandoned process which started with the third respondent's naming task team chaired by Wells. The stance adopted by the appellant is simply put, that the winner of the dispute is the party with the most signatures and that should be the last word on the matter. That cannot be. Grahamstown spans a very large area with a population far greater than the approximately 15000 persons who were against the name change. According to the respondents, the various wards were sufficiently represented and opted for a name change. As stated before, the appellant's failure to participate in the process commencing with the Mali application limited the grounds upon which he could successfully challenge the decisions taken by the first respondent.

5. For all the aforesaid considerations the appeal cannot succeed.

Costs

6. Relying on the decision in *Biowatch Trust v Registrar, Genetic Resources and Others,* [4] Lowe J held that the application for review raised genuine constitutional issues relevant to the Act and the Bill of Rights and these issues were raised *bona fide.* Accordingly, it had to be taken into account when making an appropriate costs order. The learned judge also took into account that the appellant was 70 years old. Very little had changed when the appeal was argued. Accordingly, this court should have the same approach.

7. Lastly, I wish to apologise sincerely for the very late delivery of this judgment. The reason therefore are personal and it would serve no purpose to set those reasons out herein. The legal representatives of the parties are however free to contact me in this regard, should they wish to do so.

8. In the circumstances, the following order do issue:

The appeal is dismissed.

E REVELAS

JUDGE OF THE HIGH COURT

I agree

[4] 2009 (6) SA 232 (CC)

M JOLWANA

JUDGE OF THE HIGH COURT

I agree

L RUSI

JUDGE OF THE HIGH COURT (ACTING)

Counsel for the Appellant	:	Adv I.J Smuts SC and Adv G Brown
Instructed by	:	Wheeldon Rushmere & Cole Inc.
Counsel for the Respondents	:	Adv A Beyleveld SC and Adv Nogantshi
Instructed by	:	Whitesides
Date of hearing	:	26 April 2021
Date judgment delivered	:	10 March 2022